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REMARKS

Applicants wish to thank the Examiner for reviewing the present patent application.

I. Rejection Under 35 USC §103

The Examiner has rejected claims 1, 2, 5-6, and 9 under 35 USC §103 as being unpatentable over Granger et al., U.S. Patent No. 5,723,139 (hereinafter, '139) and Pillai et al., U.S. Patent No. 6,548,072 (hereinafter, '072) in view of Liu et al., U.S. Patent No. 5,976,555 (hereinafter, '555) and Suares et al., U.S. Patent No. 5,941,116 (hereinafter, '166). In the rejection, the Examiner mentions, in summary, that the rejection is maintained for what is apparently the reasons already made of record. Furthermore, the Examiner disputes Applicants' previous arguments and suggests that the '139 reference discloses a skin conditioning composition comprising retinal or retinyl ester in an amount from about 0.001% to about 10% in combination with a retinoid booster, polycyclic tirterpene carboxylic acid and glycyrretinic acid in an amount of from about 0.0001% to about 50%. The Examiner continues by mentioning that the '072 reference teaches skin care compositions containing 5% w/w of chick pea extract which contains phytoestrogens such as genistein, formononetin, daidzein, biochanina and others and 0.01% w/w of linoleic acid for improving the appearance of wrinkled, dry, flakey or aged skin. The Examiner continues by mentioning that the '555 reference teaches that retinoids such as retinal and retinyl ester in skin care compositions are unstable due to oxidation or isomerization to non-efficacious chemical forms, and further teaches that several stable compositions for skin care can be supplied in two bottles separating retinoids from other ingredients. In view of this, the Examiner maintains that one of ordinary skill in the art would have found it obvious at the time the

invention was made to employ two compartments, the first one for storing retinoids and the second one for storing retinoid booster and a phytoestrogen to keep retinoids from reacting with its booster in order to preserve the stability of retinoids and avoid chemical degradation prior to use. Thus, the Examiner believes that the rejection made under 35 USC §103 is warranted.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

As already made of record, the present invention is directed to a stable skin care product containing a first composition comprising about 0.001% to about 10% of a retinoid; and a second composition comprising about 0.0001% to about 50% of at least one retinoid booster selected from the group consisting of arachidic acid, myristic acid, amsacrine, carbenoxolone, glycyrretinic acid, phopshatidyl ethanolamine, sphingomyelin, phosphatidylcholine, and mixtures thereof, and from about 0.001% to about 10% of at least one phytoestrogen selected from the group consisting of genistein, diadezin, glycitin, biochanin A, formononetin, equol, and mixtures thereof, a first compartment for storing the first composition and a second compartment for storing the second composition whereby the first and second compartments are joined together.

The invention of claim 1 is further defined by the dependent claims which claim, among other things, that two retinoid boosters may be used in an amount from about 0.0001% to about 50% in the second composition.

Independent claim 5 is directed to a stable skin care product containing a first composition and a second composition wherein the first composition comprises from about 0.001% to about 10% of a retinoid to provide a first benefit, and the second composition comprising from about 0.0001% to about 50% of at least one retinoid booster selected from the group consisting of vanillin, arachidic acid, linoleic acid, myristic acid, amsacrine, carbenoxolone, glycyrretinic acid, phopshatidyl ethanolamine, sphingomyelin, phosphatidylcholine, and mixtures thereof; and about 0.001% to about 10% of at least one phytoestrogen selected from the group consisting of genistein, diadzein, glycitin, biochanin A, formononetin, equol, and mixtures thereof, the booster and phytoestrogen boosting the first benefit; a first compartment for storing the first composition; and a second compartment for storing the second composition, the first and second compartments being joined together.

The invention of claim 5 is further defined by the dependent claims which claim, among other things, that the second composition can have at least two retinoid boosters in an amount of from about 0.0001% to about 50%, and that the retinoid booster may be selected from the group consisting of glycyrretinic acid, phosphatidylcholine, and mixtures thereof.

In contrast, and as already made of record, the '139 reference is merely directed to a skin care composition having a polycyclic triterpene carboxylic acid and a retinoid. The '139 reference does not teach or suggest, even remotely, the use of the claimed phytoestrogens. Moreover, the '139 reference does not teach or suggest the storage of a first composition comprising retinoid and a second composition comprising retinoid booster, and phytoestrogens in a separate compartment that is joined with a compartment holding the first composition. In an attempt to cure the vast deficiencies of the primary reference, the Examiner relies on the '072 reference. The '072

reference, however, is not prior art under 35 USC §103 and it is improper for the Examiner to rely on the '072 reference. This is true because the subject matter of the '072 patent and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person. Applicants respectfully direct the Examiner's attention to the fact that Conopco, Inc. was the owner of the subject matter and the claimed invention at the time the invention was made. Thus, again, the '072 reference is not suitable to be relied on in the present 35 USC §103 rejection. Turning to the '555 reference, the same discloses a skin care composition having an oil-in-water emulsion base containing retinoids and possessing good physical and chemical stability. It has been reported in the '555 reference that the use of retinoids in topical compositions are unstable and can either oxidize or isomerize to non-efficacious chemical forms resulting in an amount of retinoid which is so low it is unacceptable to provide a benefit. The attempts made to stabilize the retinoid in the '555 reference require a complex oil-in-water emulsion system for stabilization wherein the stabilizing system is one which requires, for example, oil-soluble antioxidants, chelating agents, or chelating agents and oil soluble antioxidants, or chelating agents and an antioxidant present in each of the oil and water phases of the emulsion. There is no teaching whatsoever in the '555 reference that even remotely suggests the combination of specific retinoids with specific boosters and phytoestrogens as claimed in the present invention. The two component system as claimed in this invention, as well as the two preferred boosters as claimed in this invention are not even remotely suggested by the '555 reference which, again, employs a complicated oil-in-water emulsion system to stabilize certain retinoids. Finally, the '116 reference teaches away from the presently claimed invention. Again, and as already made of record, the '116 reference merely describes a method for a skin treatment regime wherein a first and second composition are stored in separate containers and only connected to each other to remind the consumer to use the

compositions in tandem and to facilitate in one sale all necessary elements of a suggested regime. Thus, the '116 reference clearly teaches away from the present invention and cures none of the vast deficiencies of the primary reference since it discloses two separate containers for separating two different skin actives for two different benefits. Moreover, the reference fails to even remotely teach, suggest or disclose the need to separate phytoestrogens from retinoids. The present invention, again, is directed to two separate compositions with one intended to boost the benefit of the other. According to the present invention, the two compositions are intended to be applied simultaneously or consecutively, but are kept separately for stability reasons. The presently claimed invention clearly conveys that the specified retinoids and the phytoestrogens, although separated into two compartments, are there for the same benefit. The first composition provides a benefit to the skin while the second composition works to boost or enhance the effect of the first composition. Again, the '116 reference teaches away from the present invention and fails to provide any suggestion or motivation for the particular way the compositions of the present invention are stored separately.

The storage of the compositions in separate containers as set forth in the presently claimed invention is novel and unobvious. None of the references relied on by the Examiner, even remotely, teach all the important and critical limitations set forth in the presently claimed invention. Moreover, and as already made of record, the '072 reference is not prior art. Since the Examiner has not established a *prima facie* case of obviousness as required under 35 USC §103, Applicants request that the obviousness rejection made to claims 1, 2, 5-6 and 9 be withdrawn and rendered moot.

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II. Rejection Under 35 USC §103

The Examiner has rejected claims 1, 2, 5, 6 and 10 under 35 USC §103 as being unpatentable over Granger et al., U.S. Patent No. 5,723,139 (hereinafter, '139) and Pillai et al., U.S. Patent No. 6,548,072 (hereinafter, '072) and Maybeck, FR 2 777 179 (hereinafter, '179) in view of Liu et al., U.S. Patent No. 5,976,555 (hereinafter, '555) and Suares et al., U.S. Patent No. 5,914,116 (hereinafter, '116). In the instant Office Action, the Examiner maintains the rejection previously made of record. In addition to what has been mentioned above, the Examiner relies on the '179 reference for apparently showing skin care compositions with retinoid, retinoid boosters, and glycyrretinic acid. Particularly, the Examiner concludes, that such a composition can be used for treating skin conditions, such acne, dry skin and the like. In light of this, the Examiner believes that the obviousness rejection is warranted.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

As already made of record above, the '139 reference is directed to skin care compositions with polycyclic triterpene carboxylic acid and a retinoid. The '139 reference does not, even remotely, teach or suggest the claimed phytoestrogens. Moreover, the '139 reference does not teach or suggest the storage of a first composition comprising retinoid and a second composition comprising retinoid booster and phytoestrogens in a separate compartment whereby the two compartments are joined together.

As already made of record, the '072 reference is not prior art under 35 USC §103(c). The '179 reference appears to be directed to a cosmetic vehicle containing siloxane. Simply because the '179 reference appears to disclose the phosphatidylcholine and glycyrretinic acid somewhere in its disclosure clearly does not make it obvious for one of ordinary skill in the art to combine these materials with retinoids and with retinoid boosters in a dual compartment package and to come up with the present invention. The Examiner is not allowed to pick and choose elements from numerous references without there being motivation to combine the same. Furthermore, and as already made of record, the '555 reference is merely directed to the use of a complex oil-in-water emulsion comprising a specifically defined stabilizing system to stabilize certain retinoids. It has nothing to do with a dual compartment system as claimed in the present invention. Finally, and again, the '116 reference is directed to a treatment regime for skin that employs two different compositions that are to be used for two different benefits. The two different compositions have two different skin actives and they are stored in two separate containers. Again, the present invention is directed to two separate compositions with one intended to boost the other.

Based on the above, it is clear that all the important and critical limitations set forth in the presently claimed invention are not found in the combination of references relied on by the Examiner. In view of this, Applicants respectfully submit that a *prima facie* case of obviousness has not been established and the rejection made under 35 USC §103 should be withdrawn and rendered moot.

Applicants submit that all claims of record are now in condition for allowance. Reconsideration and favorable action are earnestly solicited.

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Applicants further submit that the claims of record are now ready for appeal, but would welcome assistance from the Examiner so that an extreme expense of an appeal may be avoided.

In the event the Examiner has any questions concerning the present patent application, the Examiner is kindly invited to contact the undersigned at his or her earliest convenience.

Respectfully submitted,

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